

§ 20.2056(d)-1

“person other than his surviving spouse” includes the possible unascertained takers of a property interest, as, for example, the members of a class to be ascertained in the future. As another example, assume that the decedent created a power of appointment over a property interest, which does not come within the purview of § 20.2056(b)-5 or § 20.2056(b)-6. In such a case, the term “person other than his surviving spouse” refers to the possible appointees and possible takers in default (other than the spouse) of such property interest. Whether or not there is a possibility that the “person other than his surviving spouse” (or the heirs or assigns of such person) may possess or enjoy the property following termination or failure of the interest therein which passed from the decedent to his surviving spouse is to be determined as of the time of the decedent’s death.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960. Redesignated and amended by T.D. 8522, 59 FR 9654, Mar. 1, 1994]

§ 20.2056(d)-1 Marital deduction; special rules for marital deduction if surviving spouse is not a United States citizen.

Rules pertaining to the application of section 2056(d), including certain transition rules, are contained in §§ 20.2056A-1 through 20.2056A-13.

[T.D. 8612, 60 FR 43538, Aug. 22, 1995]

§ 20.2056(d)-2 Marital deduction; effect of disclaimers of post-December 31, 1976 transfers.

(a) *Disclaimer by a surviving spouse.* If a surviving spouse disclaims an interest in property passing to such spouse from the decedent, which interest was created in a transfer made after December 31, 1976, the effectiveness of the disclaimer will be determined by section 2518 and the corresponding regulations. For rules relating to when the transfer creating the interest occurs, see § 25.2518-2(c)(3) and (c)(4) of this chapter. If a qualified disclaimer is determined to have been made by the surviving spouse, the property interest disclaimed is treated as if such interest had never been transferred to the surviving spouse.

(b) *Disclaimer by a person other than a surviving spouse.* If an interest in prop-

26 CFR Ch. I (4-1-04 Edition)

erty passes from a decedent to a person other than the surviving spouse, and the interest is created in a transfer made after December 31, 1976, and—

(1) The person other than the surviving spouse makes a qualified disclaimer with respect to such interest; and

(2) The surviving spouse is entitled to such interest in property as a result of such disclaimer, the disclaimed interest is treated as passing directly from the decedent to the surviving spouse. For rules relating to when the transfer creating the interest occurs, see § 25.2518-2(c)(3) and (c)(4) of this chapter.

(c) *Effective date.* The first and second sentences of paragraphs (a) and (b) of this section are applicable for transfers creating the interest to be disclaimed made on or after December 31, 1997.

[T.D. 8095, 51 FR 28368, Aug. 7, 1986. Redesignated by T.D. 8612, 60 FR 43538, Aug. 22, 1995, as amended by T.D. 8744, 62 FR 68184, Dec. 31, 1997]

§ 20.2056(d)-3 Marital deduction; effect of disclaimers of pre-January 1, 1977 transfers.

(a) *Disclaimer by a surviving spouse.* If an interest in property passes to a decedent’s surviving spouse in a taxable transfer made by a decedent dying before January 1, 1977, and the decedent’s surviving spouse makes a disclaimer of this property interest the disclaimed interest is considered as passing from the decedent to the person or persons entitled to receive the interest as a result of the disclaimer. A disclaimer is a complete and unqualified refusal to accept the rights to which one is entitled. It is, therefore, necessary to distinguish between the surviving spouse’s disclaimer of a property interest and such surviving spouse’s acceptance and subsequent disposal of a property interest. For example, if proceeds of insurance are payable to the surviving spouse and the proceeds are refused so that they consequently pass to an alternate beneficiary designated by the decedent, the proceeds are considered as having passed from the decedent to the alternate beneficiary. On the other hand, if the insurance company is directed by the surviving spouse to hold the proceeds at interest during such

spouse's life and, upon this spouse's death, to pay the principal sum to another person designated by the surviving spouse, thus effecting a transfer of a remainder interest, the proceeds are considered as having passed from the decedent to the surviving spouse. See paragraph (c) of § 20.2056(e)-2 with respect to a spouse's exercise or failure to exercise a right to take against a decedent's will.

(b) *Disclaimer by a person other than a surviving spouse*—(1) *Decedents dying after October 3, 1966 and before January 1, 1977.* This paragraph (b)(1) applies in the case of a disclaimer of property passing to one other than the surviving spouse from a decedent dying after October 3, 1966 and before January 1, 1977. If a surviving spouse is entitled to receive property from the decedent as a result of the timely disclaimer made by the disclaimant, the property received by the surviving spouse is to be treated as passing to the surviving spouse from the decedent. Both a disclaimer of property passing by the laws of intestacy or otherwise, as by insurance or by trust, and a disclaimer of bequests and devises under the will of a decedent are to be fully effective for purposes of computing the marital deduction under section 2056. A disclaimer is a complete and unqualified refusal to accept some or all of the rights to which one is entitled. It must be a valid refusal under State law and must be made without consideration. For example, a disclaimer for the benefit of a surviving spouse who promises to give or bequeath property to a child of the person who disclaims is not a disclaimer within the meaning of this paragraph (b)(1). The disclaimer must be made before the person disclaiming accepts any property under the disclaimed interest. In the case of property transferred by a decedent dying after December 31, 1970, and before January 1, 1977, the disclaimer must be made within 9 months after the decedent's death (or within any extension of time for filing the estate tax return granted pursuant to section 6081). In the case of property transferred by a decedent dying after October 3, 1966, and before January 1, 1971, the disclaimer must be made within 15 months after the decedent's death (or

within any extension of time for filing the estate tax return granted pursuant to section 6081). If the disclaimer does not satisfy the requirements of this paragraph (b)(1), for the purpose of the marital deduction, the property is considered as passing from the decedent to the person who made the disclaimer as if the disclaimer had not been made.

(2) *Decedents dying after September 30, 1963 and before October 4, 1966.* This paragraph (b)(2) applies in the case of a disclaimer of property passing to one other than the surviving spouse from a decedent dying after September 30, 1963 and before October 4, 1966. If, as a result of the disclaimer by the disclaimant, the surviving spouse is entitled to receive the disclaimed property interest, then such interest shall, for the purposes of this paragraph (b)(2), be considered as passing from the decedent to the surviving spouse if the following conditions are met. First, the interest disclaimed was bequeathed or devised to the disclaimant. Second, the disclaimant disclaimed all bequests and devises under the will before the date prescribed for the filing of the estate tax return. Third, the disclaimant did not accept any property under the bequest or devise before making the disclaimer.

The interests passing by disclaimer to the surviving spouse under this paragraph (b)(2) are to qualify for the marital deduction only to the extent that, when added to any other allowable marital deduction without regard to this paragraph (b)(2), they do not exceed the greater of the deductions which would be allowable for the marital deduction without regard to the disclaimer if the surviving spouse exercised the election under State law to take against the will, or an amount equal to one-third of the decedent's adjusted gross estate. If the disclaimer does not satisfy the requirements of this paragraph (b)(2), the property is treated as passing from the decedent to the person who made the disclaimer, in the same manner as if the disclaimer had not been made.

(3) *Decedents dying before October 4, 1966.* Unless the rule of paragraph (b)(2) of this section applies, this paragraph (b)(3) applies in the case of a disclaimer of property passing to one other than

§ 20.2056A-0

the surviving spouse from a decedent dying before October 4, 1966. For the purpose of these transfers, it is unnecessary to distinguish for the purpose of the marital deduction between a disclaimer by a person other than the surviving spouse and a transfer by such person. If the surviving spouse becomes entitled to receive an interest in property from the decedent as a result of a disclaimer made by some other person, the interest is, nevertheless, considered as having passed from the decedent, not to the surviving spouse, but to the person who made the disclaimer, as though the disclaimer had not been made. If, as a result of a disclaimer made by a person other than the surviving spouse, a property interest passes to the surviving spouse under circumstances which meet the conditions set forth in § 20.2056(b)-5 (relating to a life estate with a power of appointment), the rule stated in the preceding sentence applies, not only with respect to the portion of the interest which beneficially vests in the surviving spouse, but also with respect to the portion over which such spouse acquires a power to appoint. The rule applies also in the case of proceeds under a life insurance, endowment, or annuity contract which, as a result of a disclaimer made by a person other than the surviving spouse, are held by the insurer subject to the conditions set forth in § 20.2056(b)-6.

[T.D. 8095, 51 FR 28368, Aug. 7, 1986. Redesignated by T.D. 8612, 60 FR 43538, Aug. 22, 1995]

§ 20.2056A-0 Table of contents.

This section lists the captions that appear in the final regulations under §§ 20.2056A-1 through 20.2056A-13.

§ 20.2056A-1 Restrictions on allowance of marital deduction if surviving spouse is not a United States citizen.

- (a) General rule.
- (b) Marital deduction allowed if resident spouse becomes citizen.
- (c) Special rules in the case of certain transfers subject to estate and gift tax treaties.

§ 20.2056A-2 Requirements for qualified domestic trust.

- (a) In general.
- (b) Qualified marital interest requirements.
 - (1) Property passing to QDOT.
 - (2) Property passing outright to spouse.

26 CFR Ch. I (4-1-04 Edition)

- (3) Property passing under a nontransferable plan or arrangement.

- (c) Statutory requirements.

- (d) Additional requirements to ensure collection of the section 2056A estate tax.

- (1) Security and other arrangements for payment of estate tax imposed under section 2056A(b)(1).

- (2) Individual trustees.

- (3) Annual reporting requirements.

- (4) Request for alternate arrangement or waiver.

- (5) Adjustment of dollar threshold and exclusion.

- (6) Effective date and special rules.

§ 20.2056A-3 QDOT election.

- (a) General rule.

- (b) No partial elections.

- (c) Protective elections.

- (d) Manner of election.

§ 20.2056A-4 Procedures for conforming marital trusts and nontrust marital transfers to the requirements of a qualified domestic trust.

- (a) Marital trusts.

- (1) In general.

- (2) Judicial reformation.

- (3) Tolling of statutory assessment period.

- (b) Nontrust marital transfers.

- (1) In general.

- (2) Form of transfer or assignment.

- (3) Assets eligible for transfer or assignment.

- (4) Pecuniary assignment—special rules.

- (5) Transfer tax treatment of transfer or assignment.

- (6) Period for completion of transfer.

- (7) Retirement accounts and annuities.

- (8) Protective assignment.

- (c) Nonassignable annuities and other arrangements.

- (1) Definition and general rule.

- (2) Agreement to remit section 2056A estate tax on corpus portion of each annuity payment.

- (3) Agreement to roll over corpus portion of annuity payment to QDOT.

- (4) Determination of corpus portion.

- (5) Information Statement.

- (6) Agreement to pay section 2056A estate tax.

- (7) Agreement to roll over annuity payments.

- (d) Examples.

§ 20.2056A-5 Imposition of section 2056A estate tax.

- (a) In general.

- (b) Amounts subject to tax.

- (1) Distribution of principal during the spouse's lifetime.

- (2) Death of surviving spouse.

- (3) Trust ceases to qualify as QDOT.

- (c) Distributions and dispositions not subject to tax.

- (1) Distributions of principal on account of hardship.

- (2) Distributions of income to the surviving spouse.